William Mitchell Law Review

Volume 26 | Issue 1 Article 7

2000

Contracts—Cohabitation in Minnesota: From Love to Contract—Public Policy Gone Awry

Kim Kantorowicz

CONTRACTS—COHABITATION IN MINNESOTA: FROM LOVE TO CONTRACT—PUBLIC POLICY GONE AWRY

In Re Estate of Palmen, 588 N.W.2d 493 (Minn. 1999)

Kim Kantorowicz†

I. INTRODUCTION

Cohabitation[1] outside of matrimonial vows is a way of life for millions

† J.D. Candidate 2001, William Mitchell College of Law; B.A. Macalester College.

1. Cohabitation is defined as "constant living or dwelling together in the same place as husband and wife." 52 AM. JUR. 2D *Marriage* § 50 (1970). For a general discussion of Minnesota cohabitation laws, see Harry G. Prince, *Public Policy*

of Americans.[2] Nonetheless, outdated laws frequently govern the property

Limitations on Cohabitation Agreements: Unruly Horse or Circus Pony?, 70 MINN. L. REV. 163, 163-209 (1985).

2. *See* J. Thomas Oldham & David S. Caudill, *A Reconnaissance of Public Policy Restriction upon Enforcement of Contracts Between Cohabitants*, 18 FAM. L.Q. 93, 96 (1984) (stating that it is not uncommon for unmarried couples to live together for a long period of time and have children together); William A. Reppy, Jr., *Property and Support Rights of Unmarried Cohabitants: A Proposal for Creating a New Legal Status*, 44 LA. L. REV. 1677, 1677 (1984) (stating that in the mid 1980s millions of heterosexual couples lived together outside of marriage). Census figures indicate that the number of unmarried couples living in the United States has grown over the last three decades from 53,000 to 3.7 million. *See Living Together Kit Updates With Times*, DAYTON DAILY NEWS, Mar. 30, 1997, at 2e, *available in* 1997 WL 3933030. The Washington Post recognized:

> As dumb as shacking up can be, more and more people are doing it. Researchers report that by 1997, the total number of unmarried cohabiting couples in the United States topped 4 million, up from less than half a million in 1960. More than half of all first marriages are now preceded by cohabitation, compared with virtually none earlier in the century. And in surveys, most young people say it is a good idea to live with a person before marrying.

Michelle Singletary, *Don't Risk Ending Up In a Crumbling Shack*, WASH. POST, February 21, 1999, at HO1; *see also* Lawrence G. Proulx, *Those Who Cohabit Want Fewer Kids*, STAR TRIB. (Minneapolis-St. Paul), December 8, 1997, at 9E (noting that for many couples cohabitation provides an opportunity for an "alternative lifestyle that teaches that marriage and child nursing are not necessary"). *See, e.g.*, Jennifer Steinhauer, *Cohabitation Booms Among Baby Boomers*, STAR TRIB. (Minneapolis-St. Paul), July 30, 1995, at 1E (noting that the greatest increase in cohabitants is among people over 35 years of age). Although cohabitation is becoming generally accepted, it is still widely opposed by U.S. religions and conservative individuals. *See* Paul Klauda, *More Live Together Before Marriage But It's No Guarantee They'll Stay Together*, STAR TRIB. (Minneapolis-St. Paul), May 1, 1988, at 1B. The strongest opposition comes from Catholics and moderate Protestants. *See id.* For example, in Minnesota, the Catholic Diocese of St. Cloud will not marry couples who refuse to refrain from living together before marriage. *See id.* The switch from marriage to cohabitation is not only a phenomenon in the United States, but also a worldwide trend. *See International Comparison of Cohabitation Rates* (visited Oct. 23, 1999) <http://jin.jcic.or.jp/stat/stats/02VIT34.html>. The percent of cohabitation among individuals aged 25-29 in the following countries is as follows: Germany (1988) 11%; France (1986) 14%; Italy (1983) 2%; United Kingdom (1986) 10%; Canada (1991) 40%; Sweden (1985) 48%. *See id.* The percent of males between the ages of 25-29 living with the opposite sex in Japan is 1.3% and the percent of women in the same age group living with the opposite sex in Japan is 1.4%. *See id.*; *see also* G. Garcia Cantero, *Spain: Cohabitation in the Courts*, 33 U. LOUISVILLE J. FAM. L. 507, 507 (1994-95) (noting increasing cohabitation since the 1970s in Spain); Anna Kwak, *Nonmarital Cohabitation in Law and Public Opinion in Poland*, 10 INT'L J.L. POL. & FAM. 1, 17-26 (1996) (stating that increased cohabitation is evident in Poland).

rights of unmarried cohabitants.[3] Instead of updating laws that have not kept up with societal norms, the Minnesota Legislature took a giant leap backward when it enacted Minnesota's cohabitation laws[4] as a part of the Minnesota Statute of Frauds.[5] The statutes provide that absent a written

---

3. *See generally* Craig A. Bowman & Blake M. Cornish, *A More Perfect Union: A Legal and Social Analysis of Domestic Partnership Ordinances*, 92 COLUM. L. REV. 1164, 1165 (1992) (criticizing current laws regarding the rights of non-traditional families as failing to keep pace with changing social realities); Ellen Kandoian, *Cohabitation, Common Law Marriage, and the Possibility of a Shared Moral Life*, 75 GEO. L.J. 1829, 1829 (1987) (discussing the evolution and purpose of many cohabitation laws). Another prolific legal topic regarding rights of unmarried cohabitants are those of homosexual cohabitants. However, the development of this issue is beyond the scope of this paper. For a discussion of the issue, see Martha M. Ertman, *Contractual Purgatory for Sexual Marginorities: Not Heaven, But Not Hell Either*, 73 DENV. U.L. REV. 1107, 1110 (1996) (discussing the contractual rights of homosexual partners, in light of the fact they are not allowed to marry by law one another); Lynn D. Wardle, *Legal Claims for Same-Sex Marriage: Effort to Legitimate a Retreat from Marriage by Redefining Marriage*, 39 S. TEX. L. REV. 735, 741 (1998) (discussing the rights of homosexual cohabitants compared to heterosexual cohabitants); Symposium, *Developments in the Law—Sexual Orientation and the Law: Same Sex Couples and the Law*, 102 HARV. L. REV. 1508, 1603 (1989) (considering the rights of homosexual couples in all areas of the law); Kristin Bullock, Comment, *Applying* Marvin v. Marvin *to Same-Sex Couples: A Proposal for a Sex-Preference Neutral Cohabitation Contract Statute*, 25 U.C. DAVIS L. REV. 1029, 1040 (1992) (stating that homosexual cohabitants are not being treated the same as unmarried heterosexual cohabitants in light of *Marvin v. Marvin*); Rebecca L. Melton, Note, *Legal Rights of Unmarried Heterosexual and Homosexual Couples and Evolving Definitions of "Family,"* 29 J. FAM. L. 497, 517 (1990) (noting that since homosexual cohabitation is less accepted by society than its heterosexual counterpart, courts have been more inclined to find certain homosexual cohabitation contracts unenforceable).

4. *See generally* Mary L. Knoblauch, *Minnesota's Cohabitation Statute*, 2 LAW & INEQ. J. 335, 337-42 (1984) (criticizing the Minnesota Legislature for enacting statutes that do not accurately reflect the behavior and attitudes of cohabiting couples). These cohabitation laws are often referred to as palimony laws. *See id.* "Palimony" is defined as a term that has meaning similar to "alimony" but arises out of a non-marital relationship. *See* BLACK'S LAW DICTIONARY 1134 (7th ed. 1999).

5. "The statute of frauds was enacted to prevent fraud, and not to allow or encourage it." Hagelin v. Wacks, 61 Minn. 214, 215, 63 N.W. 624, 625 (1895). The Minnesota Statute of Frauds provides in part:

> No action shall be maintained, in either of the following cases, upon any agreement, unless such agreement, or some note or memorandum thereof, expressing the consideration, is in writing, and subscribed by the party charged therewith:
> (1) Every agreement that by its terms is not to be performed within one year from the making thereof;
> (2) Every special promise to answer for the debt, default or doings of another;
> (3) Every agreement, promise, or undertaking made upon consideration of marriage, except mutual promises to marry;

contract, Minnesota courts lack jurisdiction to hear property claims by cohabitants.[6] In short, a loving relationship prior to marriage now requires formalization by written contract.[7] Although the statutes seek to promote the certainty of expectations and preempt litigation, the legislature has only created confusion by promulgating the statutes.[8] Recently the Minnesota Supreme Court helped clarify property rights of cohabitants,[9] but failed to conclusively recognize the validity of the statutes' application in light of unjust enrichment[10] and other equitable claims.[11] This note addresses the property rights of cohabitants and the unnecessary confusion created by cohabitation statutes.[12] In *In re Estate of Palmen*,[13] the Minnesota Supreme Court considered whether a woman could recover claims against her decedent cohabitor's estate.[14] The couple did not have a written contract as required by statute and therefore the court lacked jurisdiction to hear the case.[15] However, the court made an exception.[16] It held that the woman's claim was not based upon her cohabitation, but on recovery of

---

(4) Every agreement, promise or undertaking to pay a debt which has been discharged by bankruptcy or insolvency proceedings.

MINN. STAT. § 513.01 (1998). A statute of frauds is a "legal term of art." *See* Knoblauch, *supra* note 4, at 335 n.4 (1984) (citing JOHN CALAMARI & JOSEPH PERILLO, THE LAW OF CONTRACTS § 19-1, at 672-74 (2d ed. 1977)). Under the Minnesota Cohabitation Statutes, unless a contract such as a cohabitation agreement is in writing, a claimant cannot maintain a cause of action to enforce the contract. *See* MINN. STAT. §§ 513.075-.076 (1998).

6. *See* MINN. STAT. §§ 513.075-.076 (1998). These statutes are to be read *in pari materia*, and "apply only where the sole consideration for a contract between cohabiting parties is their contemplation of sexual relations . . . out of wedlock." *In re* Estate of Eriksen, 337 N.W.2d 671, 673-74 (Minn. 1983). *In pari materia* statutes are those relating to the same person or thing or having a common purpose. *See* BLACK'S LAW DICTIONARY 791 (7th ed. 1999). This rule of statutory construction, that statutes, which relate to the same subject matter should be read, construed and applied together so that the legislature's intention can be gathered from the whole of the enactments, applies only when the particular statute is ambiguous. *See id.*

7. *See* MINN. STAT. §§ 513.075-.076.

8. *See* Prince, *supra* note 1, at 169 (recognizing that inconsistent opinions within the judiciary regarding cohabitant rights have lead to imprecise and unjust results).

9. *See In re* Estate of Palmen, 588 N.W.2d 493, 496 (Minn. 1999).

10. *See infra* note 43.

11. *See Palmen*, 588 N.W.2d at 497. For a discussion of other equitable claims, see *infra* note 43.

12. *See infra* Part II.D–E.

13. 588 N.W.2d 493 (Minn. 1999).

14. *See id.* at 493.

15. *See id.* at 495.

16. *See id.* at 496.

her personal contributions to the property.[17] By separating claims founded upon cohabitation from those of recovery of personal contributions, the court found the case was not jurisdictionally barred.[18] While the Minnesota Supreme Court reached the correct conclusion in *Palmen*, it ignored the extent of the application of the statutes in light of claims for unjust enrichment[19] and other equitable remedies.[20]

This case note will first examine the background of common law cohabitation and then explore the landmark case of *Marvin v. Marvin*.[21] The note will go on to explain Minnesota's cohabitation statutes,[22] and then examine Minnesota's cohabitation cases.[23] Part III examines the facts and the majority's analysis of the Minnesota Court of Appeals and the Minnesota Supreme Court in the *In re Estate of Palmen* decision.[24] Part IV analyzes the implications from the supreme court's holding in *Palmen*[25] and Part V addresses necessary steps in moving forward from the *Palmen* decision.[26] Finally, this note will conclude that cohabitation statutes in Minnesota are unnecessary and contrary to public policy.[27] Until either the Minnesota Supreme Court or Minnesota Legislature boldly recognizes the problems perpetuated by the statutes, confusion will only continue.

II. BACKGROUND

A. *The Emergence of Cohabitation Through Common Law Marriage*

Cohabitation has existed for centuries.[28] In the absence of any direct proof of a marriage contract,[29] cohabitation was seen as a legitimate op-

17. *See id.*
18. *See id.* at 496-97.
19. *See infra* note 43.
20. *See infra* note 134.
21. *See infra* Part II.C.
22. *See infra* Part II.D.
23. *See infra* Part II.E.
24. *See infra* Part III.A–C.
25. *See infra* Part IV.A–B.
26. *See infra* Part V.
27. *See infra* Part VI.
28. *See* Stuart J. Stein, *Common Law Marriage: Its History and Certain Contemporary Problems*, 9 J. FAM. L. 271, 276-77 (1969) (tracing cohabitation laws in the United States back to the 1660s in American colonial legislation and caselaw).
29. Minnesota statutes define a "marriage contract" as a civil contract between a man and a woman with lawful consent. *See* MINN. STAT. § 517.01 (1998). A lawful marriage is between persons of the opposite sex and exists only when a license has been obtained. *See id. See generally* Warner v. Warner, 219 Minn. 59, 66, 17 N.W.2d 58, 67 (1944) (citing State v. Armington, 25 Minn. 29, 37 (1878), *available in* 1878 WL 3549 (holding that each state has "exclusive right and power" to

tion at a time when formalizing a marriage was difficult because of expense, geographic remoteness, and the limited number of persons authorized to perform marriage ceremonies.[30] Cohabitation between people ultimately signaled matrimony if the couple agreed.[31] This arrangement was known as common law marriage.[32]

To prove a common law marriage valid in Minnesota, a couple had to disclose cohabitation as man and wife.[33] Another way to prove common law marriage was open assumption of marital duties and obligations for a sufficient length of time.[34] The mere general reputation that parties were married was not alone sufficient to prove common law marriage.[35]

By the late nineteenth century, common law marriages via cohabitation were believed by the general public to be morally questionable.[36] Be-

---

determine "its resident and domiciled citizens and subjects" status with respect to marriage and divorce)); Guptil v. E.O. Dahlquist Contracting Co., 197 Minn. 211, 212, 266 N.W. 748, 750 (1936) (holding that marriage is a civil contract, except that it is not revocable or dissoluble at will of the parties).

30. *See In re* Estate of Palmen, 574 N.W.2d 743, 745 (Minn. Ct. App. 1998), *rev'd*, 588 N.W.2d 493 (Minn. 1999); *see also* 52 AM. JUR. 2D *Marriage* § 53 (1970) (citing a Florida decision holding that "[t]he fact that a common law marriage was contracted for convenience or business reasons did not affect the validity of the marriage"); *In re* Hulett's Estate, 66 Minn. 327, 336, 69 N.W. 31, 33 (1896) (holding all that is necessary to render competent parties as husband and wife is that they agree to be such). *See generally* 52 AM. JUR. 2d *Marriage* § 45 (1970) (recognizing the legitimacy of cohabitation). *But see* 52 AM. JUR. 2D *Marriage* § 50 (1997) (stating that cohabitation is not always required to form a valid common law marriage).

31. *See* Hemingway v. Miller, 87 Minn. 123, 128, 91 N.W. 428, 429 (1902). "If persons were competent to enter into a marriage contract and agreed between themselves in the present tense to become husband and wife, the marriage was complete." *Id.* Cohabitation added nothing to the contract except that it constituted evidence of the contract. *See id.* In Minnesota, a common law wife had the same rights as a married wife. *See* 300-F OP. ATT'Y GEN. (1947). For a history of common law marriage, see Stein, *supra* note 28, at 272.

32. *See* Stein, supra note 28, at 272; *see also* BLACK'S LAW DICTIONARY 986 (7th ed. 1999); *Married, Filing Separately*, STAR TRIB. (Minneapolis-St. Paul), July 31, 1994, at 27A (stating that after three years of cohabitation, English common law deemed a couple to be married whether or not they filed for marriage).

33. *See* Ghelin v. Johnson, 186 Minn. 405, 408, 243 N.W. 443, 445 (1932); *see also In re* Welker's Estate, 196 Minn. 447, 450, 265 N.W. 273, 275 (1936) (noting that showing mere cohabitation, which was not shown to be of matrimonial nature or intent, without evidence of public matrimonial behavior or general matrimonial repute, was insufficient to establish common law marriage).

34. *See Ghelin*, 186 Minn. at 408, 243 N.W. at 445.

35. *See id.* Cohabitation as husband and wife is evidence of marriage but it may still be rebutted by the conduct of the parties. *See* Le Suer v. Le Suer, 122 Minn. 407, 410, 142 N.W. 593, 594 (1913).

36. *See Palmen*, 574 N.W.2d at 745 (citing Ellen Kandoian, *supra* note 3, at 1848). *But cf.* David S. Caudill, Comment, *Legal Recognition of Unmarried Cohabita-*

cause of public disapproval, states began abolishing the institution of the common law marriage, but varied in the timing of their abolition of common law marriage.[37] Minnesota abolished common law marriages in 1941.[38]

---

tion: A Proposal to Update and Reconsider Common Law Marriage, 10 TENN. L. REV. 537, 564 (1982) (recognizing that common law marriages are prolific and require new legal consideration).

37. *See, e.g.*, FLA. STAT. ANN. § 741.211 (West 1997) (voiding common law marriage entered into after January 1, 1968); GA. CODE ANN. § 19-3-1.1 (1996) (outlawing common law marriage in Georgia on or after January 1, 1997); IDAHO CODE. § 32-201 (1995) (recognizing no common law marriage after January 1, 1996); 750 ILL. COMP. STAT. ANN. 5/214 (West. 1993) (voiding common law marriages contracted after June 30, 1905); IND. CODE ANN. § 31-11-8-5 (West 1998) (voiding common law marriage if the marriage was entered into after January 1, 1958); Enis v. State, 408 So. 2d 486, 487 (Miss. 1981) (voiding common law marriages contracted after April 5, 1956); McAdoo v. Metropolitan Life Ins. Co., 110 S.W.2d 845, 847 (Mo. Ct. App. 1937) (outlawing common law marriage in Missouri in 1921); NEV. REV. STAT. § 122.010 (1997) (recognizing no common law marriages after March 29, 1943); N.J. STAT. ANN. § 37:1-10 (West 1998) (voiding common law marriage on and after December 1, 1939). *But see* People v. Badgett, 895 P.2d 877, 897 (Cal. 1995) (recognizing that although California does not recognize common law marriage, it recognizes the validity of marriage contracted in another state that would be valid by laws of that state). In contrast, the courts of Delaware have never recognized common law marriages. *See* Owens v. Bentley, 14 A.2d 391, 391 (Del. Super. Ct. 1940).

38. *See* MINN. STAT. § 517.01 (1998). Common law marriages in Minnesota are void, not merely prohibited. *See* Laikola v. Engineered Concrete, 277 N.W.2d 653, 656 (Minn. 1979). A lawful marriage is now recognized as:

> [A] civil contract between a man and a woman, to which the consent of the parties, capable in law of contracting, is essential. Lawful marriage may be contracted only between persons of the opposite sex and only when a license has been obtained as provided by law and when the marriage is contracted in the presence of two witnesses and solemnized by one authorized, or whom one or both of the parties in good faith believe to be authorized, so to do. Marriages subsequent to April 26, 1941, not so contracted shall be null and void.

MINN. STAT. § 517.01. In Minnesota, only common law marriages contracted on or before April 26, 1941 are recognized as valid. *See* Carlson v. Olson, 256 N.W.2d 249, 251 (Minn. 1977). *See also Laikola*, 277 N.W.2d at 658 (recognizing a common law marriage if the couple takes up residence (but not necessarily domicile) in another state that allows common law marriages and the parties thereby establish the public reputation in that state of having assumed the marital relationship, as well as the other elements of a common law marriage). Only 10 states (Alabama, Colorado, Iowa, Kansas, Montana, Oklahoma, Pennsylvania, Rhode Island, South Carolina, and Texas) and the District of Columbia still recognize common law marriage. *See* IOWA CODE ANN. § 595.11 (West 1998); KAN. STAT. ANN. § 23-101 (1995); MONT. CODE ANN. § 40-1-403 (1997); PA. STAT. ANN. tit. 48, § 1-23 (West 1988); TEX. FAM. CODE. ANN. § 1-101 (West 1999); Herd v. Herd, 69 So. 885, 887-88 (Ala. 1915); Clayton Coal Co. v. Industrial Comm'n of Colo., 25 P.2d 170, 172 (Colo.

B. *Cohabitation After the Abolition of Common Law Marriage*

The abolition of common law marriage affected the rights cohabitants had with respect to property accumulated during the relationship.[39] Ordinarily, common law marriage divided the parties' individual property rights should the relationship dissolve.[40] However, since the abolition of common law cohabitation,[41] courts have struggled to resolve these disputes.[42]

Minnesota courts have traditionally embraced one approach to resolve disputes over property rights: equitable remedies.[43] For example, in

---

1933); Matthews v. Britton, 303 F.2d 408, 409 (D.C. Cir. 1962); *In re* Trope's Estate, 124 P.2d 733, 736 (Okla. 1942); Silva v. Merritt, Champman & Scott Corp., 156 A. 512, 513 (R.I. 1931); Rodgers v. Herron, 85 S.E.2d 104, 113 (S.C. 1954).

39. *See Carlson*, 256 N.W.2d at 251 (stating that the elimination of common law marriage necessitates a creative application of traditional common law and equitable principles to such situations).

40. *See id.*

41. The elimination of common law marriage generally left the parties open to the possible application of three legal doctrines:

> First, cohabitation between the parties to an express or implied contract might serve to render the contract illegal and, as a consequence, unenforceable. Second doctrines generally applicable to arm's length business transactions were consulted, rather than those ordinarily used in noncommercial contexts. Third, courts refused to assign any economic value to the granting of personal services.

Carlson, 256 N.W.2d at 251.

42. *See, e.g.*, Baker v. Baker, 222 Minn. 169, 171, 23 N.W.2d 582, 583 (1946). In *Baker*, the plaintiff brought an action claiming to be the common law wife of the defendant and asked for a divorce and division of property. *See id.* at 583. However, the trial court found that both parties knew the defendant did not receive a divorce from his first wife until 1942, a date after the outlawing of common law marriages in Minnesota. *See id.* The court found that the plaintiff knew of defendant's prior marriage at the time the alleged common law marriage commenced. *See id.* Thus, the court granted no relief. *See id.*

43. *See id.* Equitable remedies are remedies that are available in a situation where it would be just or fair to impose them. *See* DAN B. DOBBS, LAW OF REMEDIES §§ 2.1-2.4, at 48-85 (2d ed. 1993). Such remedies may include unjust enrichment, quantum meruit or constructive trusts. *See id.* Unjust enrichment is founded on the principle that one who has received money, which in equity and good conscience should have been paid to someone else, that money should be paid over to the deserving party. *See* Cady v. Bush, 83 Minn. 105, 110, 166 N.W.2d 358, 361-62 (1969). Unjust enrichment may be based on failure of consideration, fraud, mistake, and situations where it would be morally wrong for one party to be enriched at the expense of another. *See* Hesselgrave v. Harrison, 435 N.W.2d 861, 863 (Minn. Ct. App. 1989). A claim based upon quantum meruit prevents unjust enrichment by one who has benefited from labor of another by implying a promise to pay. *See In re* Marshall, 211 B.R. 662, 666 (D. Minn. 1997). Quantum meruit and unjust enrichment are often alleged together. *See id. See generally* Burns v.

Carlson v. Olson,[44] the Minnesota Supreme Court held that the utilization of equitable remedies were available to cohabitants in cases where no express contract defining property rights existed.[45] The court acknowledged that cohabitants had legal rights to property accumulated during the relationship.[46] Although equitable remedies were applied in *Carlson*, their use was not well defined by the court.[47] Equitable remedies and issues surrounding cohabitation were given new meaning in the wake of the landmark case of *Marvin v. Marvin*.[48]

Koellmer, 527 A.2d 1210, 1214 (Conn. 1987) (recognizing quantum meruit and unjust enrichment as recovery options between unmarried couples); Bright v. Kuehl, 650 N.E.2d 311, 315 (Ind. Ct. App. 1995) (cohabiting prior to marriage may entitle a party to equitable relief); *Carlson*, 256 N.W.2d at 251 (applying equitable remedies in cohabitation relationship). A "constructive trust" is defined as "[a] trust imposed by a court on equitable grounds against one who has obtained property by wrongdoing, thereby preventing the wrongful holder from being unjustly enriched." BLACK'S LAW DICTIONARY 1515 (7th ed. 1999). *See also* RESTATEMENT OF RESTITUTION § 160 (1936). If a party takes property in any unconscientious manner, equity will impress a constructive trust upon that party in favor of the party who is equitably entitled to the property. *See* Henderson v. Mumey, 108 Minn. 76, 79, 121 N.W. 214, 216 (1909). An implied contract is also referred to as an equitable remedy. *See* Bright v. Kuehl, 650 N.E.2d 311, 315 (Ind. Ct. App. 1995); *see also* Levar v. Elkins, 604 P.2d 602, 604 (Alaska 1980) (recognizing implied contract where 20 years of cohabitation included promise to provide financial support in exchange for services as homemaker); Hudson v. DeLonjay, 732 S.W.2d 922, 927 (Mo. Ct. App. 1987) (recognizing implied contract of cohabitants).

44. 256 N.W.2d 249 (Minn. 1977). In *Carlson*, Laura Carlson and her partner Oral Olson lived as non-marital cohabitants for 21 years. *See id.* at 250. During this time they held themselves out to be husband and wife, raised a son, and acquired property. *See id.* After the relationship dissolved, Ms. Carlson brought an action to recover one-half of the property they had acquired. *See id.* The trial court determined that since the parties had intended to divide the property equally, Ms. Carlson was entitled to half of the property. *See id.* at 255.

45. *See id.*

46. *See id.* However, the Minnesota Legislature later rejected equitable remedies set forth by *Carlson* in favor of the cohabitation statutes enforcing written contracts only. *See* Cummings v. Cummings, 376 N.W.2d 726, 730 (Minn. Ct. App. 1985); Knoblauch, *supra* note 4, at 337-38.

47. *See Carlson*, 256 N.W.2d at 255. The court recognized that "in the absence of an express contract, the courts should inquire into the conduct of the parties to determine whether that conduct demonstrates an implied contract, agreement of partnership or joint venture, or some other tacit understanding between the parties." *Id.* The court also acknowledged employing the doctrine of quantum meruit, or equitable remedies such as constructive or resulting trusts, but gave no concrete guidance as to when such warranties would be appropriate. *See id.* The court only stated application would be acceptable "when warranted by the facts of the case." *Id.*

48. 557 P.2d 106 (Cal. 1976). *See* Keirsten G. Anderson, *Protecting Unmarried Cohabitant's from the Religious Freedom Restoration Act*, 31 VAL. U. L. REV. 1017, 1017-78 (1997) (discussing whether to refuse to rent to unmarried couples); W. Edward

C. Marvin v. Marvin *and the Change in Cohabitant Property Rights*

In 1976, the contract claims of a woman based on her non-marital cohabitant relationship received national attention.[49] In *Marvin v. Marvin*,[50] property was acquired during the relationship in the man's name only.[51] The female cohabitor sought enforcement of an oral contract to acquire half of all property acquired during the parties' relationship.[52] She claimed she had forfeited a career as an actress and a singer in order to provide homemaking services and support for her cohabitor's career.[53]

The California Supreme Court held that contracts between non-marital partners were enforceable "unless they rest solely on the consideration of sexual services."[54] In addition, contracts may be implied by evi-

---

Skees, *Marital Status Discrimination*, 36 BRANDEIS J. FAM. L. 328, 330 (1998) (analyzing caselaw and finding the refusal to rent to unmarried couples constitutes discrimination of marital status); Caroline C. Kureshi, Comment, *The Extension of the Bystander Liability Doctrine for Emotional Distress to Unmarried Cohabitants: A Critique of* Dunphy v. Gregor, 48 RUTGERS L. REV. 497, 510-20 (1996) (discussing the New Jersey Supreme Court's holding that an unmarried cohabitant should be permitted to institute an action for negligent infliction of emotional injury); Matthew Mehr, Note, *Property Rights of Unmarried Cohabitants Pursuant to an Agreement*, 27 ARIZ. L. REV. 769, 769-76 (1985) (analyzing caselaw that holds agreements between unmarried cohabitants are enforceable under contract principles); Sonja A. Soehnel, Annotation, *Action for Loss of Consortium Based on Nonmarital Cohabitation*, 40 A.L.R. 4TH 553 (1985) (analyzing caselaw that allows an unmarried cohabitant to state a cause of action for loss of consortium).

49. *See* Marvin v. Marvin, 557 P.2d 106 (Cal. 1976).

50. *See id.* This case gained significant notoriety because it involved the famous movie actor Lee Marvin, who had lived with Michelle Marvin for seven years outside of marriage. *See id.* at 110. Interestingly, the case does not indicate if Michelle Marvin's maiden name was "Marvin," or if she assumed Lee Marvin's name or vice versa. *See id.* at 106.

51. *See id.* at 110.

52. *See id.* A subsequent case, known as "Marvin II," was decided five years later. *See* Marvin v. Marvin, 176 Cal. Rptr. 555 (1981); *see also A Chronological Summary of "Palimony" Law Since Marvin* (last modified 1997) <http://www.palimony.com/12.html>. In *Marvin II*, Lee Marvin appealed an order requiring rehabilitation payments to Michelle Marvin. *See Marvin*, 176 Cal. Rptr. at 558-59. Marvin argued that the payments were void where the "plaintiff benefited economically and socially from her relationship with defendant and suffered no damage." *Id.* The court decided that the defendant never had any obligation to pay plaintiff a reasonable sum for her maintenance nor was he unjustly enriched. *See id.* at 558. Despite the findings in this case, the court continued to acknowledge equitable remedies to protect expectations of those who cohabit. *See id.*

53. *See Marvin*, 557 P.2d at 106.

54. *See id.* at 112. The common phraseology stemming from Marvin was "meretricious relationship sexual services." *See id.*

dence of the conduct of the parties where no express contract exists.[55] Equitable remedies were thus available to the parties seeking to enforce the existence of the implied contract.[56] The *Marvin* case signaled that a cohabitant was entitled to collect on cohabitation claims.[57] This case recognized an impetus for change in law regarding cohabitants' rights.[58] The *Marvin* holding that unmarried cohabitants may bring actions to enforce express or implied contracts, as long as they are founded upon consideration independent of sexual services,[59] reflected a changing social climate regarding unmarried cohabitants.[60] The decision soon became the catalyst for similar decisions by other courts.[61]

---

55. *See id.* at 122. The term implied or inferred contract is when the agreement and promise have simply not been expressed in words. *See* 1 SAMUEL WILLISTON, TREATISE ON THE LAW OF CONTRACTS § 1.5 (Richard A. Lord ed., 4th ed. 1990). For a general discussion of implied contracts, *see* FRIEDRICH KESSLER ET AL., CONTRACTS CASES AND MATERIALS 141-46 (1986) (comparing express and implied contracts, and explaining that the legal effect is indistinguishable). An implied contract claim was not alleged in the *Palmen* case. *See generally In re* Estate of Palmen, 574 N.W.2d 743 (Minn. Ct. App. 1998), *rev'd*, 588 N.W.2d 493 (Minn. 1999). Even if an implied contract claim had been alleged, the cohabitation statutes specifically deny a court's jurisdiction to preside over claims that were not memorialized in writing. *See infra* notes 63-64 and accompanying text.

56. *See Marvin*, 557 P.2d at 122-23. The court found that otherwise valid express and implied contracts between cohabitants were not void by the parties' cohabitation. *See id.* Such contracts should be enforced and cohabitants should be permitted to obtain equitable relief under constructive trust and quantum meruit theories. *See id.* at 122. The *Marvin* decision generated much discussion. *See, e.g.*, Jeffrey Rosen, Note, *Taylor v. Polackwich: Property Rights of Unmarried Cohabitants-From Marvin to Equity*, 14 GOLDEN GATE U. L. REV. 745, 766-67 (1984) (examining the rights of unmarried couples upon separation and arguing that current law is inequitable and should be changed); Case Comment, *Property Rights Upon Termination of Unmarried Cohabitation*, Marvin v. Marvin, 90 HARV. L. REV. 1708, 1711 (1977) (stating that the *Marvin* decision has created equity for unmarried couples and it was the correct response to societal changes).

57. *See Marvin*, 557 P.2d at 122.

58. *See id. See e.g.*, Hill v. Ames, 606 P.2d 388, 390 (Alaska 1980) (recognizing the *Marvin* application of equitable principles); Cochran v. Cochran, 66 Cal. Rptr. 2d 337, 340 (Cal. Dist. Ct. App. 5th 1997) (same); Estate of Black, 206 Cal. Rptr. 663, 664 (Cal. App. 5th 1984) (same); Hewitt v. Hewitt, 394 N.E.2d 1204, 1206 (Ill. 1979) (same); Brooks v. Kunz, 637 S.W.2d 135, 137 (Mo. Ct. App. 1982) (same); Warren v. Warren, 579 P.2d 772, 774 (Nev. 1978) (same).

59. *See Marvin*, 557 P.2d at 122.

60. *See id.*

61. *See, e.g.*, Kozlowski v. Kozlowski, 403 A.2d 902, 906 (N.J. 1979) (holding that agreements between adult non-marital partners are enforceable if not explicitly and inseparably founded on sexual services); Watts v. Watts, 405 N.W.2d 303, 316 (Wis. 1987) (holding that unmarried cohabitants can bring claims that rest in either contract or equity such as unjust enrichment or partition); *In re* Estate of Steffes, 290 N.W.2d 697, 708-09 (Wis. 1980) (holding that contracts between unmarried cohabitants are enforceable if independent from illicit sexual conduct).

D. *Minnesota Cohabitation Statutes*

In the wake of the *Marvin* decision, the Minnesota Legislature enacted sections 513.075 and 513.076 of the Minnesota Statute of Frauds.[62] These sections read:

> If sexual relations between the parties are contemplated, a contract between a man and a woman who are living together in this state out of wedlock, or who are about to commence living together in this state out of wedlock, is enforceable as to terms concerning the property and financial relations of the parties only if:
>
> 1) the contract is written and signed by the parties, and
>
> 2) enforcement is sought after termination of the relationship.[63]
>
> [U]nless the individuals have executed a contract complying with the provisions of section 513.075, the courts of this state are without jurisdiction to hear and shall dismiss as contrary to public policy any claim by individual to the earnings or property of another individual if the claim is based on the fact that the individuals lived together in contemplation of sexual relations

---

But see Hewitt v. Hewitt, 394 N.E.2d 1204, 1211 (Ill. 1979) (holding enforcement of cohabitation agreements as contrary to public policy); *In re* Estate of Alexander, 445 So. 2d 836, 838-39 (Miss. 1984) (refusing to enforce implied agreement to share property upon dissolution of non-marital cohabitation); Zaremba v. Cliburn, 949 S.W.2d 822, 829 (Tex. Ct. App. 1997) (holding that property claims arising from non-marital cohabitation of two male "partners" are subject to statute of frauds provision requiring written contract).

62. *See* MINN. STAT. §§ 513.075-.076 (1998); *In re* Estate of Palmen, 574 N.W.2d 743, 745 (Minn. Ct. App. 1998), rev'd, 588 N.W.2d 493 (Minn. 1999). *See also* Robert Oliphant, *Drafting Live-In Contracts*, 38 BENCH & B. MINN. 49, 51 (Apr. 1982). Oliphant wrote:

> The new law recognized the validity of a cohabitation agreement where unwed couples lived together and sexual relations were contemplated. The law encouraged couples to straighten out their property and financial affairs before or during the relationship. By requiring that the agreement between unmarried cohabitants be in writing, the legislature hoped to eliminate the uncertainty and acrimony generated in *Marvin v. Marvin*. With the enactment of the statue, the stage was set for efforts to help unwed cohabitants properly arrange their financial and property affairs.

Id.

63. MINN. STAT. § 513.075 (1998).

and out of wedlock within or without this state.[64]

Together these statutes are known as the anti-palimony statutes.[65] In short, the statutes provide that absent a written contract between cohabitants, a Minnesota court lacks jurisdiction to hear claims by cohabitants.[66] The Legislature's goal in enacting the statute was to avoid acrimonious lawsuits such as *Marvin*.[67] However, requiring cohabiting couples to have a written contract is a legislative phenomenon unique only to Minnesota and Texas.[68] Although the statutes seek to "promote the certainty of expectations and pre-empt problems with litigation"[69] they have only created confusion while limiting the rights of cohabitants.[70]

E. *Minnesota Cohabitation Cases*

The Minnesota Supreme Court has only directly tackled the cohabitation statutes once before *Palmen*.[71] In *In re Estate of Eriksen*,[72] a couple rented a home together.[73] They contributed equally to expenses.[74] For a

64. MINN. STAT. § 513.076 (1998).

65. *See* Obert v. Dahl, 574 N.W.2d 747, 749 (Minn. Ct. App. 1998), *aff'd* 587 N.W.2d 844, 844 (Minn. 1999).

66. *See* MINN. STAT. §§ 513.075-.076.

67. *See Palmen*, 574 N.W.2d at 745.

68. As of November 29, 1999, no cohabitation statutes existed in states other than Minnesota and Texas. Search of WESTLAW, ALLSTATES database using search term "cohabitation." The Texas statute reads: "[a] promise or agreement made on consideration of marriage or nonmarital conjugal cohabitation is not enforceable unless the promise or agreement or a memorandum of the promise or agreement is in writing and signed by the person obligated by the promise or agreement." TEX. FAM. CODE ANN. § 1.108 (West 1998). This statute became effective in 1997. *See id.* Interestingly, there are states that have statutes prohibiting living in open adultery; in fact, that practice is criminally punishable. *See* ARIZ. REV. STAT. ANN. § 13-409 (West 1999); FLA. STAT. ANN. § 798.01-.02 (West 1998); MICH. COMP. LAWS § 750.335 (1998); MISS. CODE ANN. § 97-29-1 (1999); N.M. STAT. ANN. § 30-10-2 (Michie 1999); N.D. CENT. CODE § 12.1-20-10 (1997); VA. CODE ANN. § 18.2-345 (Michie 1999); W. VA. CODE § 61-8-4 (1997).

69. *Palmen*, 574 N.W.2d at 745.

70. *See id.*

71. *See In re* Estate of Eriksen, 337 N.W.2d 671 (Minn. 1983). Although *Eriksen* was the only Minnesota Supreme Court case tackling the cohabitation statutes, its holding was not without controversy as recognized by the Minnesota Court of Appeals. *See* Roatch v. Puera, 534 N.W.2d 560, 564 (Minn. Ct. App. 1995) ("Eriksen represents a narrow factual exception to the statutory requirement."); *see also infra* note 93.

72. 337 N.W.2d 671 (Minn. 1983)

73. *See id.* at 672.

74. *See id.*

variety of reasons they purchased a home only in the man's name[75] but still shared all costs equally.[76] The woman sought and was awarded a one-half interest in the property after the man's sudden death.[77] The probate court found the decedent's estate would be unjustly enriched[78] if it held sole title to the property since the bereaved "non-widow" contributed to a portion of the building of the log cabin.[79]

The court rejected the plain language of the statutes imposing a jurisdictional bar of the claim when the "sole consideration for a contract between cohabiting parties is their contemplation of sexual relations out of wedlock."[80] Instead, the Minnesota Supreme Court upheld the award stating the female's claim was "wholly independent of any service contract related to her cohabitation."[81] This interpretation was significant because the "wholly independent" language suggested that sexual relations might be a consideration, but not the sole consideration in determining a jurisdictional bar.[82]

Eriksen created a factual and valid exception to the cohabitation statutes.[83] Although it reinterpreted the statutes by adding its "wholly independent" consideration language, it stopped short of tackling contractual

75. *See id.* This agreement was reached because the woman was still married, though legally separated. *See id.* Any acquisition of property would give property rights to her estranged husband and it was also unlikely that the estranged husband would have consented as required by law. *See id.* Aid to Families with Dependent Children (AFDC) authorities also advised her she would lose supplemental AFDC benefits if she took a legal interest in the property. *See id.*

76. *See id.* The woman cohabitant contributed equally toward the expenses of purchasing and maintaining the home, including mortgage payments, homeowner's insurance, taxes, utilities, and premiums for life insurance. *See id.* Prior to their agreement to purchase a home, the couple lived together for approximately two years during which they contributed equally to the payments of certain expenses including rent and utilities. *See id.*

77. *See id.* at 672-73.

78. *See id.* A person who has been unjustly enriched at the expense of another is required to make restitution to the other. *See* RESTATEMENT OF RESTITUTION § 1 (1936). The modern law of restitution dates from 16th and 17th century common law. *See id.*; *see also* Timmer v. Gray, 395 N.W.2d 477, 478 (Minn. Ct. App. 1986) ("[A]ctions for unjust enrichment may be based on failure of consideration, fraud, mistake, and situations where it would be morally wrong for one party to enrich himself at the expense of another."). *But see* Anderson v. DeLisle, 352 N.W.2d 794, 796 (Minn. Ct. App. 1984) (implying that unjust enrichment should not be invoked merely because one party made a bad bargain).

79. *See Eriksen*, 337 N.W.2d at 674.

80. *See id.* at 674 (quoting MINN. STAT. § 513.076).

81. *See id.*

82. *See id.*

83. *See id.*

issues related to cohabitation.[84] Questions were raised by subsequent Minnesota courts as to what determines whether a contract claim is "wholly independent" from the cohabitational sexual relationship.[85] By finding each party contributed equally to the purchase of property, the *Eriksen* court justified its holding as protection and preservation of one's own property and avoided direct application of a statutory interpretation.[86] *Eriksen* then preempted the discussion of whether the contract claim was truly separate from any sexual relationship related to cohabitation.[87]

The preemption of such discussion created confusion as to when the statutes should apply.[88] The court's establishment of a constructive trust[89] as an equitable remedy in *Eriksen* perpetuated further problems.[90] The court's recognition of a constructive trust helped void the effect of a statute mandating cohabitation arrangements to be in writing.[91] That device also created confusion regarding how equitable remedies would apply in future cases.[92]

Since *Eriksen*, the cohabitation statutes have undergone stricter interpretation[93] and these resulting decisions have continued to promote

84. *See id.* at 673-74.
85. *See infra* note 93.
86. *See Eriksen*, 337 N.W.2d. at 674.
87. *See id.*
88. Several appellate cases have held various views regarding when the statutes should apply. *See infra* note 93. As in *Eriksen*, these cases stray from the critical discussion of whether the relationship was truly separate from the cohabitation relationship while avoiding or dismissing whether one should be entitled to equitable relief.
89. *See supra* note 43.
90. *See Eriksen*, 337 N.W.2d at 674.
91. *See id.*
92. *See infra* note 107 and accompanying text.
93. *See, e.g.*, Roatch v. Puera, 534 N.W.2d 560, 564 (Minn. Ct. App. 1995) (holding that *Eriksen* can be distinguished because it "represents a narrow factual exception" to Minnesota's statutory requirement that contracts between unmarried cohabitants be in writing); Mechura v. McQuillan, 419 N.W.2d 855, 858 (Minn. Ct. App. 1988) (distinguishing *Eriksen* because that case involved a situation where both parties made equal contributions to the property and the female cohabitant was not asserting rights in the property of the male cohabitant, but protecting her own property, which she purchased "for cash consideration wholly independent of any service contract related to cohabitation"); Tourville v. Kowarsch, 365 N.W.2d 298, 300 (Minn. Ct. App. 1985) (holding that statutes applied because although mortgage was jointly executed, property was not purchased jointly); Hollum v. Carey, 343 N.W.2d 701, 704 (Minn. Ct. App. 1984) (holding that statutes applied because property was not jointly purchased and there was no clear understanding of joint ownership as well as no extenuating circumstances to justify lack of a written agreement). *But see* Cummings v. Cummings, 376 N.W.2d 726, 728 (Minn. Ct. App. 1985) (holding that the cohabitation

uncertainty.[94] Minnesota courts have failed to give clear interpretations advancing guidance as to how the statutes should be applied.[95] While the *Eriksen* decision attempted to clarify the cohabitation statues, it did not go far enough. The Minnesota Supreme Court recently made another effort to clarify the statutes in its decision in *In re Estate of Palmen.*

III. THE *PALMEN* CASE

A. *Facts*

Deborah Schneider and the decedent, John Palmen, cohabited outside of marriage for eleven years.[96] During the course of their relationship they were engaged to marry.[97] During this time, Palmen purchased property upon which the couple built a cabin.[98] The two conceived of the idea and planned to make the cabin their retirement home.[99] The title of the property was held only in Palmen's name.[100]

John Palmen committed suicide in 1996.[101] After he died,[102] Schneider sued Eric Palmen, the personal representative of John Palmen's estate, based upon a claim of unjust enrichment.[103] Schneider stated she was entitled to $48,051 from the estate value due to her investment of $5,991 in cash for materials and $42,060 in labor in the cabin.[104] Palmen's estate

---

statutes did not apply because the cohabitation and subsequent marriage occurred prior to the effective date of the statutes).

94. As in *Eriksen*, these cases stray from the critical discussion of whether the relationship was truly separate from the cohabitation relationship while avoiding or dismissing whether one should be entitled to equitable relief. *See supra* note 93; *see also Eriksen*, 337 N.W.2d at 674.

95. *See supra* note 93.

96. *See In re* Estate of Palmen, 574 N.W.2d 743, 743 (Minn. Ct. App. 1998), *rev'd*, 588 N.W.2d 493 (Minn. 1999).

97. *See* Appellant's Brief at 3, *In re* Estate of Palmen, 588 N.W.2d 493 (Minn. 1999) (No. C2-97-1546).

98. *See id.*

99. *See id.* The record does not indicate whether the couple had children. *See id.*

100. *See id.*

101. *See* Appellant's Brief at 3, *Palmen* (No. C2-97-1546).

102. It is unclear from the facts why the two never married. *See id.*

103. *In re Estate of Palmen*, 574 N.W.2d 743, 746 (Minn. Ct. App. 1998), *rev'd*, 588 N.W.2d 493 (Minn. 1999); Appellant's Brief at 3, *Palmen* (No. C2-97-1546).

104. *See Palmen*, 574 N.W.2d at 746. Schneider stated that the couple agreed to share in the expense and labor of building the log cabin. *See* Appellant's Brief at 3, *Palmen* (No. C2-97-1546). She stated the decedent had said that she would become a joint owner of the property upon their marriage. *See id.* She also alleged she was promised by decedent that she would be reimbursed for her labor, materials, and fixtures she purchased if things did not work out in their relationship. *See*

argued that Schneider failed to meet the condition precedent to commencement of an action, which required the existence of a written agreement.[105] The estate was granted summary judgment under section 513.076 of the Minnesota Statute of Frauds.[106]

B. *The Minnesota Court of Appeal's Analysis*

The Minnesota Court of Appeals affirmed the decision of the district court.[107] The court did not find any evidence Schneider contributed

---

id.

105. *See* Respondent's Brief at 6, *In re Estate of Palmen*, 574 N.W.2d 743 (Minn Ct. App. 1998) (No. C2-97-1546). Palmen's estate also took issue with the "sole consideration" argument set forth in *Eriksen*. *See id.* at 12. *See also supra* notes 80-87. The party argued that "sole consideration" was not consistent with the literal language of the cohabitation statutes. *See* Respondent's Brief at 12, *Palmen* (No. C2-97-1546). In addition, Schneider testified at her deposition that she never expected to get paid for her labor and contributions. *See id.* at 5.

106. *See Palmen*, 574 N.W.2d at 745. Schneider also submitted evidence of canceled checks for materials and tools purchased, property taxes, expenses, and an accounting of labor invested. *See* Appellant's Brief at 9, *Palmen* (No. C2-97-1546). She argued that this evidence was sufficient to support a claim against Palmen's estate for unjust enrichment and was sufficient to establish a genuine issue of material fact precluding summary judgment. *See id.*

107. *See Palmen*, 574 N.W.2d at 746. Ironically, the court's decision was not in accord with a decision rendered the same day by a different panel of the Minnesota Court of Appeals. In *Obert v. Dahl*, the parties lived together for approximately four years. *See* Obert v. Dahl, 574 N.W.2d 747, 748 (Minn. Ct. App. 1998), *aff'd*, 587 N.W.2d 844, 844 (Minn. 1999). During this time they decided to purchase a house together. *See id.* Because Obert had a poor credit history, the couple decided to purchase the house solely in Dahl's name, but agreed to later amend the title to the property to include Obert's name. *See id.* In order to help Dahl qualify for financing, Obert spent $27,000 to help reduce Dahl's debt load. *See id.* Soon after Dahl received financing and the couple moved into the home, the relationship dissolved and Obert moved out. *See id.* The court held that cohabitants may bring claims for accumulated property that are supported by independent consideration. *See id.* at 750. The *Obert* court applied the interpretation set out by *Eriksen*, *supra* note 84 and accompanying text, which had a more equitable outcome. *See id.* The court held that summary judgment is not appropriate where genuine issues of material fact exist as to whether parties' sexual relations were the "sole consideration" for any contract between them and whether the female cohabitant sought to preserve her own property or tried to acquire the male cohabitant's earnings or property. *See id.* However, the *Obert* court found that because the court could not answer the question of "sole consideration" it could not consider other equitable remedies that might apply. *See id.* The Minnesota Court of Appeals in *Palmen* distinguished *Obert*'s failure to grant summary judgment on factual distinctions, but failed to state what those distinctions were. *See Palmen*, 574 N.W.2d at 746 (Minn. Ct. App. 1998). Interestingly, in an unpublished decision released in May 1998, the Minnesota Court of Appeals found that the statute also applied, and the court failed to address whether a woman's contract claim was separate from any cohabitant's sexual relationship. *See* Otto v. Otto, No. C8-97-

equally to the purchase and maintenance of the cabin.[108] It determined that Schneider and Palmen could have entered into a joint contract or joint tenancy.[109] The statutes were found applicable because the "sole consideration for the contract was contemplation of sexual relations out of wedlock."[110]

The court further stated that unless the claim satisfies the requirements of Minnesota Statutes section 513.075,[111] courts in Minnesota do not have jurisdiction to hear any claim when based on the fact the individuals lived together in contemplation of sexual relations out of wedlock.[112] The court found that claims brought under such contracts must be dismissed as contrary to public policy.[113]

The decision was not unanimous.[114] In his dissent, Judge Forsberg argued that *Eriksen* was "on point and controlling."[115] He believed that Schneider's situation was parallel to the woman's situation in *Eriksen.*[116] He stated that Schneider was only preserving and protecting her own property rather than trying to claim property based solely upon the cohabitation relationship.[117] Judge Forsberg went on to opine that the court punished Schneider for entering into the agreement to purchase the cabin.[118] Judge Forsberg also noted that the majority's reasoning that equitable remedies were not available to Schneider but could be available to other parties who did not have a sexual relationship was misplaced.[119]

C. *The Minnesota Supreme Court's Analysis*

The Minnesota Supreme Court reversed the appellate court's decision.[120] It held that Schneider's claims were not based solely upon her cohabitation with decedent in contemplation of sexual relations.[121] The

---

1924, 1998 WL 268047, at *3 (Minn. Ct. App. May 26, 1998).

108. *See Palmen*, 574 N.W.2d at 746.

109. *See id.* For a joint tenancy to exist, unity of time, title, interest, and possession must concur. *See* Hendrickson v. Minneapolis Fed. Sav. & L. Ass'n., 281 Minn. 462, 464, 161 N.W.2d 688, 690 (1968).

110. *See id.* (citing *In re* Estate of Eriksen, 337 N.W.2d 671, 674 (Minn. 1983)). *But compare supra* note 104.

111. *See supra* note 63.

112. *See Palmen*, 574 N.W.2d at 746.

113. *See id.*

114. *See id.*

115. *See id.* (Forsberg, J., dissenting).

116. *See id.* (Forsberg, J., dissenting).

117. *See id.* (Forsberg, J., dissenting).

118. *See id.* at 747. (Forsberg, J., dissenting).

119. *See id.* (Forsberg, J., dissenting).

120. *See In re* Estate of Palmen, 588 N.W.2d 493, 497 (Minn. 1999).

121. *See id.* at 496.

court decided that her claims were only to recover her own contributions to the log cabin's construction.[122] The court also recognized that Schneider's position was similar to an individual seeking recovery based upon unjust enrichment.[123]

---

122. *See id.*

123. *See id.* at 497. Since its decision on January 28, 1999, *Palmen* has been cited seven times. The first case to cite *Palmen* was decided by the Minnesota Supreme Court on the same day that court decided *Palmen*. *See* Obert v. Dahl, 587 N.W.2d 844, 844 (Minn. 1999) (holding that the legal issue presented in this case was identical to the legal issue presented in Palmen). The next five cases that cited *Palmen* used the case merely to state the standard of review on appeal from a summary judge motion. *See* God's Helping Hands v. Taylor Inv. Corp., No. C7-99-624, 1999 WL 759991, at *1 (Minn. Ct. App. Sept. 28, 1999) (stating that on appeal from a summary judgment motion, the court must review the record to determine whether any genuine issues of material fact exist and whether the district court erred in applying the law); Opus Northwest, L.L.C. v. Minneapolis Community Dev. Agency, 599 N.W.2d 582, 583 (Minn. Ct. App. 1999) (same); Hollerman v. River Roost, Inc., No. C7-99-414, 1999 WL 639278, at *1 (Minn. Ct. App. Aug. 24, 1999) (same); Scott v. Forest Lake Chrysler-Plymouth-Dodge, 598 N.W.2d 713, 716 (Minn. Ct. App. 1999) (same); Patterson v. Wu Family Corp., 594 N.W.2d 540, 546 (Minn. Ct. App. 1999) (same). Recently, on November 23, 1999, the Minnesota Court of Appeals seems to have brought new light on some of the issues previously discussed in *Palmen*. *See* Ellis v. Wenz, No. C0-99-772, 1999 WL 1059630 (Minn. Ct. App. Nov. 23, 1999) (unpublished decision). The facts of *Ellis* are quite similar to *Palmen*. In *Ellis*, respondent Ellis purchased property while he and appellant Wenz cohabitated. *See id.* He brought an action for partition of the property and was awarded judgment. The appellant did not contribute equally to the purchase and maintenance of the parties' home. *See id.* Appellant contributed a total of $4300 (3.87%) to the acquisition and improvement of the property over a period of two years. *See id.* Petitioner contributed $106,952 (96.13%) toward the property over this same time period. *See id.* The court of appeals, citing *Palmen*, held that Minnesota Statutes sections 513.075-.076 did not preclude jurisdiction over the claim of a cohabitant to recover for her contribution to the home. *See id.* The court therefore awarded appellant the $4300 she had made in mortgage payments on the home. *See id.* More importantly, however, was the dissenting opinion from Judge Crippen. *See id.* (Crippen, J., dissenting in part). Judge Crippen, citing *Palmen*, stated that the fundamental aim in real estate partition proceedings, "is to achieve an equitable result." *Id.* Judge Crippen further stated that this goal was not accomplished in Ellis because the appellant was awarded only her "direct" contributions to the home and not her "indirect" contributions to the property. *See id.* "The equitable purpose of a partition proceeding cannot be achieved unless the district court is allowed to render a ruling which, under all circumstances, is fair." *Id.* Although this decision was unpublished, the opinion and Judge Crippen's dissent highlights the continuing problems of the cohabitation statutes. Judge Crippen's dissent supports the recognition of the application of equitable principles.

IV. ANALYSIS OF THE PALMEN CASE

A. *The Minnesota Supreme Court Correctly Expanded its Interpretation of the Minnesota Cohabitation Statutes*

As in *Eriksen*, the Minnesota Supreme Court in *Palmen* correctly expanded its interpretation of the cohabitation statutes.[124] Rather than depart from the standard set forth in *Eriksen* as the appellate court did,[125] the supreme court embraced that standard.[126] The decision recognized the validity of property claims supported by consideration that were "wholly independent" from the sexual relationship, rather than the "sole consideration."[127]

In doing so, the Minnesota Supreme Court recognized that public policy was not well served by the strict interpretation of the cohabitation statutes.[128] Ironically, the legislative intent behind the statutes is simply not aligned with today's societal behavior.[129] The Legislature's desire to provide unmarried couples with a degree of certainty as to property rights based solely upon strict interpretation of statutes is unrealistic. Because of these statutes, Minnesota courts are finding themselves making legal determinations regarding whether an individual had an interest in property outside of a sexual relationship.[130] In addition, cohabitors are punished for not forming a contract before cohabitation, rather than being allowed to enjoy a loving, cohabiting relationship apart from the confines of a con-

124. *See id.* at 496-97. The *Palmen* court rejected the statutory plain language stating "the jurisdictional bar imposed by sections 513.075 and 513.076 applies only when the sole consideration for a contract between cohabiting parties is their contemplation of sexual relations . . . out of wedlock." *See id.*

125. *In re* Estate of Palmen, 574 N.W.2d 743 (Minn. Ct. App. 1998), *rev'd*, 588 N.W.2d 493 (Minn. 1999).

126. *See Palmen*, 588 N.W.2d at 495.

127. *See id.*

128. *See id.* at 496; *see also* Twila L. Perry, *Dissolution Planning in Family Law: A Critique of Current Analysis and a Look Toward the Future*, 24 FAM. L.Q. 77, 118 (1990). Perry recognizes that requiring cohabitants to create written contracts as a part of dissolution planning is unrealistic. *See id.* at 118. Such a requirement is premised on the assumption that cohabitants are aware of the legal consequences of their relationships. *See id.* This requirement imposes financial penalties upon those who do not have a written contract while other states allow claims based upon equitable relief. *See id.*; *see also* Prince, *supra* note 1, at 164-68. Prince states that discouraging sexual relations outside of marriage stands on a wary foundation. *See id.* at 192. In addition, he argues that the split of authority in cohabitation cases results in part from the failure of courts to adequately define the relevant public policy interests. *See id.* at 193.

129. *See* Proulx, *supra* note 2, at 9E (recognizing the millions of individuals who cohabit).

130. *See supra* note 93.

tract.[131]

By reemphasizing the principles espoused in *Eriksen*,[132] the court set forth its commitment to recognizing the reasonable expectation and behavior of cohabiting parties.[133] The decision propelled sound public policy that must be followed rather than reinterpreted.

B. *The Minnesota Supreme Court Ignored the Extent of the Application of Unjust Enrichment and Other Equitable Remedies*

The court could have continued moving forward by boldly acknowledging the broad application of unjust enrichment and other equitable remedies.[134] A forceful recognition regarding their application in cohabitation claims may have lain to rest future controversies as to when equitable remedies apply and compelled the legislature to reexamine the real effect of its cohabitation statutes.

Equitable remedies are significant because they are distinct from the cohabitation statutes, and therefore are not barred by the statute's jurisdictional language.[135] Indeed, equitable principles should govern all co-

131. *See supra* note 93.

132. *See In re* Estate of Eriksen, 337 N.W.2d 671, 671 (Minn. 1983).

133. Most unwed persons who choose to cohabit likely do so "in ignorance of the (financial) consequences of either marriage or non-marriage" and "with absolutely no thought given to the legal consequences of their relationship." Coney v. Coney, 503 A.2d 912, 918 (N.J. Sup. Ct. 1985) (citing Carol S. Burch, *Property Rights of De Facto Spouses Including Thoughts on the Value of Homemakers Services*, 10 FAM. L.Q. 101, 135 (1976)). A formal agreement often may not exist. *See id.* Hence, it would be foolish to require some form of contract as a prerequisite to relief in the courts. *See id.* It is better to presume that the parties intend to deal fairly upon dissolution of the relationship. *See id.*

134. Schneider specifically alleged a claim based upon unjust enrichment. *See* Appellant's Brief at 3, *In re* Estate of Palmen, 574 N.W.2d 743 (Minn. Ct. App. 1998) (No. C2-97-1546). A court may fashion equitable remedies based on the exigencies and facts of each case in order to accomplish a just result. *See* Clark v. Clark, 288 N.W.2d 1, 11 (Minn. 1979).

135. *See* MINN. STAT. §§ 513.075–.076 (1998). The language of these statutes does not apply to unjust enrichment claims. *See supra* notes 63-64. Other states have applied unjust enrichment principles in a cohabitational relationship. *See* Boland v. Catalano, 521 A.2d 142, 146 (Conn. 1987) (ordering a new trial and allowing contract, partnership, joint venture, or equitable remedies in a cohabitation situation); Glasgo v. Glasgo, 410 N.E.2d 1325, 1330 (Ind. Ct. App. 1980) (upholding contractual and equitable grounds to prevent unjust enrichment); Shold v. Goro, 449 N.W.2d 372, 373-74 (Iowa 1989) (allowing damages for breach of implied or express contract, or constructive trust, or quantum meruit despite cohabitation and applying unjust enrichment); Johnston v. Estate of Phillips, 706 S.W.2d 554, 558-59 (Mo. Ct. App. 1986) (holding that evidence did not show cohabitants had an agreement and denying quantum meruit theory); Coney v. Coney, 503 A.2d 912, 917-18 (N.J. Super. Ct. Ch. Div. 1985) (holding equitable remedies were

habitation cases that involve a property dispute such as this case.[136] In this case, Schneider argued a valid claim for unjust enrichment apart from her contractual claim.[137] However, through its analysis of whether the court had jurisdiction, her claim of unjust enrichment became lost.[138] Instead, the court needlessly focused on whether it had jurisdiction of the contract claim rather than allowing Schneider's unjust enrichment claim, which was not barred by statute or jurisdiction, to simply go forward.[139]

The court ultimately found that Schneider's claims were separate from her sexual relationship but added that "Schneider is in the same position as any other individual seeking to recover on the theory of unjust enrichment."[140] This plain language by the court suggests that had jurisdiction not been found, Schneider could have successfully relied upon a theory of unjust enrichment to litigate her claim.[141]

Hence, the court had the opportunity to recognize that intrusive cohabitation statutes, probing whether a couple's property was acquired

---

available to distribute real property acquired during cohabitation by parties that later married to prevent unjust enrichment); Suggs v. Norris, 364 S.E.2d 159, 162 (N.C. Ct. App. 1988) (ruling that cohabitation does not bar recovery under contract, quasi-contract, or equitable remedies). In *Glasgo*, the court stated:

> To apply the traditional rationale denying recovery to one party in cases where contracts are held to be void simply because illegal sexual relations are posited as consideration for the bargain is unfair, unjust, and unduly harsh. Such unnecessary results probably do more to discredit the legal system in the eyes of those who learn of the facts of the case than to strengthen the institution of marriage or the moral fiber of our society. To deny recovery to one party in such a relationship is in essence to unjustly enrich the other.

Glasgo, 410 N.E.2d at 1330.

136. *See generally* Gardiner v. Gardiner, 93 So. 2d 638 (Miss. 1957); *see also* Marvin v. Marvin, 557 P.2d 106 (Cal. 1976) (holding that equitable remedies including an implied contract may be available to protect the reasonable expectations of a nonmarital partner). It is the inherent power of the court to apply equitable remedies to meet the needs of a particular case. *See* Perpignani v. Vonasek, 408 N.W.2d 1, 18 (Wis. 1987). However, it is well established that equitable remedies are generally not available where there exists an adequate remedy at law. *See* Besser v. Rule, 510 S.E.2d 530 (Ga. 1999); Central States Found. v. Balka, 590 N.W.2d 832 (Neb. 1999).

137. *See In re* Estate of Palmen, 574 N.W.2d 743, 743 (Minn. Ct. App. 1998), *rev'd*, 588 N.W.2d 493 (Minn. 1999).

138. *See id.*

139. *See id.* Minnesota Statutes sections 513.075–.076 do not specifically address jurisdictional issues regarding restitutionary claims between unmarried couples. *See* MINN. STAT. §§ 513.075–.076 (1998).

140. *In re* Estate of Palmen, 588 N.W.2d 493, 497 (Minn. 1999).

141. *See id.*

"apart from the sexual relationship," serve no effective purpose because valid equitable remedies still exist. The *Palmen* court could have eliminated the confusion completely by taking a cue from its decision in *Eriksen*.[142] The *Eriksen* court imposed a constructive trust consisting of a one-half interest in the unwed cohabitant's home in order to prevent unjust enrichment by the decedent's estate.[143] Although it examined the question of whether the property was acquired "apart from the sexual relationship," the court did not dismiss the idea of addressing the unjust enrichment claim.[144]

In order to "alleviate complex litigation and acrimony,"[145] Minnesota must address such remedies in cohabitation disputes, rather than hide behind the jurisdictional application of the statute. If the *Palmen* court had addressed unjust enrichment, whether favorable or not, further confusion regarding how and when these remedies apply in light of the cohabitation statutes may have been appropriately alleviated. In addition, the court would have been well served to address the application of general equitable remedies in cohabitation disputes. A strong stance regarding those remedies may have propelled the Minnesota Legislature to reexamine the public policy behind its cohabitation statutes in light of a litigant's opportunity for success based upon equitable claims.

V. MOVING FORWARD FROM THE *PALMEN* DECISION

With the proliferation of unmarried cohabitation relationships and the need for equitable redress upon dissolution,[146] the application of equitable remedies in Minnesota has become lost in light of the cohabitation statutes.[147] It is time to embrace a more modern approach. Minnesota courts must begin to reevaluate these conflicts with their own statutory in-

142. *See In re* Estate of Eriksen, 337 N.W.2d 671, 673-74 (Minn. 1983) (holding that equitable claims were justified).

143. *See id.* at 674.

144. *See id.*

145. *In re* Estate of Palmen, 574 N.W.2d 743, 745 (Minn. Ct. App. 1998), *rev'd*, 588 N.W.2d 493 (Minn. 1999).

146. *See* U.S. Bureau of the Census, *Marital Status and Living Arrangement: March 1990, Current Population Reports P-20, No. 450, table O* (1990) (finding that it is no longer uncommon for unmarried couples to stay together for a substantial length of time and have children). In 1990, 2.9 million, or 4.5 percent of American households in 1937, consisted of unmarried cohabitants. *See id.* Cohabitation has become so common that some employers and government entities have begun to offer benefits to cohabitants previously available to only married couples. *See* Steven K. Wiesensale & Kathyln E. Heckart, *Domestic Partnerships: A Concept Paper and Policy Discussion*, 42 FAM. REL. 199, 199 (1993).

147. *See supra* Part IV.B.

terpretation and look to jurisdictions such as Wisconsin, which tackles equitable remedies in the cohabitation context with success,[148] thereby leaving no room for the confusion that is currently present in Minnesota.[149]

The controversy may further be untangled by boldly rejecting the cohabitation statutes.[150] Alternatively, the Minnesota Legislature could re-

148. *See* Lawlis v. Thompson, 405 N.W.2d 317, 321 (Wis. 1987) (holding that public policy does not preclude cohabitant's claim for unjust enrichment); Watts v. Watts, 405 N.W.2d 303, 313 (Wis. 1987) (holding that female cohabitant may be entitled to an equitable share based on an implied contract, unjust enrichment or constructive trust); Ward v. Jahnke, No. 97-2145, 1998 WL 301095, at *3 (Wis. Ct. App. June 10, 1998) (holding that various labor services satisfied a claim for unjust enrichment as well as contributions to property if so reflected by the evidence); Hartman v. McDonough, No. 97-2798, 1998 WL 265111, at *3 (Wis. Ct. App. May 27, 1998) (awarding a judgment on the bases of implied contract and unjust enrichment based on a cohabitation relationship even though plaintiff did not contribute equally). *But see* Schultz v. Kelly, No. 97-2812, 1998 WL 157036, at *3 (Wis. Ct. App. April 7, 1998) (reflecting unjust enrichment claim when benefits conferred are offset by benefits received); Waage v. Borer, 525 N.W.2d 96, 99 (Wis. Ct. App. 1994) (holding that housekeeping efforts were insufficient to state a claim of unjust enrichment absent allegation that boyfriend retained unreasonable portion of joint assets). Although other state courts have applied equitable principles, the author selects Wisconsin as a model state due to the recent Wisconsin Supreme Court and appellate court cases which have dealt with similar fact patterns to Minnesota cases discussed. While Texas is the only other state with a cohabitation statute, there have been no Texas cases directly dealing with the statutes since its enactment in 1997. Search of WESTLAW, TX-CS database, for "cohabitation" and "1.91."

149. *See supra* notes 93, 129.

150. Rejecting the cohabitation statutes is a realistic option. For example, in 1975, the Minnesota Supreme Court abolished sovereign immunity with respect to tort claims on or after August 1, 1976. *See* Nieting v. Blondell, 306 Minn. 122, 132, 235 N.W.2d 597, 603 (1975). The decision was subject to any further action by the legislature. *See id.* Prior to its abolition, the Minnesota Supreme Court had recognized sovereign immunity as archaic and prospectively overruled it as a defense with respect to tort claims against school districts, municipal corporations, and other subdivisions of government. *See* Spanel v. Mounds View Sch. Dist. No. 621, 264 Minn. 279, 292, 118 N.W.2d 795, 803 (1962). Other courts had also denounced sovereign immunity. *See, e.g.*, Veach v. City of Phoenix, 427 P.2d 335, 337 (Ariz. 1967) (allowing claim against city for negligent failure to supply a fire hydrant); Smith v. State, 473 P.2d 937, 948 (Idaho 1970) (holding that sovereign immunity was no defense to tort where state was acting in a proprietary, not governmental role); Molitor v. Kaneland Community Unit Dist. No. 302, 163 N.E.2d 89 (Ill. 1959); Campbell v. State, 284 N.E.2d 733, 737 (Ind. 1972); Haney v. City of Lexington, 386 S.W.2d 738, 742 (Ky. 1964) (holding that city was not immune from tort liability for negligent swimming pool operation); Johnson v. Municipal Univ. of Omaha, 169 N.W.2d 286, 288-89 (Neb. 1969) (holding that a municipal university can be liable for negligence); Brown v. City of Omaha, 160 N.W.2d 805, 809 (Neb. 1968) (holding that city was not immune from tort liability for motor vehicle operation); Rice v. Clark County, 382 P.2d 605, 608 (Nev. 1963) (holding that sovereign immunity was not a defense for the county's negligent operation of roads) Willis v. Dept. of Conservation and Econ. Dev., 264 A.2d 34 (N.J. 1970)

spond to *Palmen* by modifying the present language of the statutes or repealing them entirely. The legislature could clear up confusion by better characterizing what constitutes a "contract" within the statutes.[151]

Whichever road the courts or legislature follow, each must begin to meet realistic expectations of cohabiting parties, rather than punish individuals for lifestyle choices.[152]

VI. CONCLUSION

The *Palmen* decision made an incremental step forward in recognizing a cohabitor's property rights and finding Minnesota's cohabitation statutes inapplicable. However, it failed to forcefully recognize the limiting nature of cohabitation statutes in light of a claim for unjust enrichment and other potential equitable remedies. Cohabitation statutes calling into question one's sexual relationship are unnecessary and serve no public policy in recognizing a cohabiting couple's realistic expectations of their relationship. As long as the opportunity for other equitable remedies exist, the statutes only perpetuate confusion.

(abolishing tort immunity despite the fact that the legislature had created a state claims commission to handle those tort claims).

151. *See supra* notes 63-64 and accompanying text.

152. *See supra* note 2.